

Regulatory Impact Statement

Guardianship and Administration (Fees) Regulations 2022



Justice
and Community
Safety

OFFICIAL



Table of contents

1. Executive Summary	4
1.1 Overview	4
1.2 Problem to be addressed	5
1.3 Objective of the proposed regulations	5
1.4 Assessment Criteria	5
1.5 Fee Options	5
1.5.1 Option 1: the base case - no regulations and no fees. Not preferred.	6
1.5.2 Option 2: current arrangement - income threshold to pay the fee set at the poverty line. Preferred.	6
1.5.3 Option 3: income threshold to pay the fee set higher than the poverty line to recognise the additional cost burden of disability. Not preferred.	6
1.5.4 Option 4: full cost recovery of administration order costs. Not preferred.	6
1.6 Determining the preferred option	7
1.6.1 Table: summary of assessment of options	8
2. The <i>Guardianship and Administration Act 2019</i> (GAA).....	10
2.1 Summary	10
2.1.1 Powers to set fees under the GAA	10
2.1.2 Operational impacts on VCAT due to the changes in the GAA.....	11
2.1.3 Operational impacts on VCAT due to the COVID-19 pandemic	11
2.2 A modern framework for guardians and administrators	11
2.2.1 A new definition of “decision-making capacity”	11
2.2.2 Respecting the represented person’s “will and preference”	12
2.2.3 Tailored and proportionate orders	12
2.3 Recognition of supported decision-making	12
2.3.1 The GAA recognises supportive guardians and supportive administrators	12
2.3.2 No fee is charged for supported administration.....	13
3. Problem analysis	13
3.1 The problem to be addressed in this RIS	13
3.1.1 The current fees	14
3.1.2 The current regulations.....	15
3.2 Factors to consider in scoping options to address the problem	15
3.2.1 Victorian Government pricing principles	15
3.2.2 Revenue to VCAT from the current fee	17
3.2.3 Cost to VCAT in running the Guardianship List.....	17
3.2.4 Impact of supportive administrator appointments	18
3.2.5 A represented individual's capacity to pay	18



3.3	Regulatory objective of the solution to the problem	19
4.	Assessment of regulatory options	20
4.1	Non-viable options: considered, but not analysed further	20
4.1.1	Full recovery of the total cost of the Guardianship List	20
4.1.2	Full cost recovery of administration orders only with one flat fee (no income threshold)	21
4.1.3	Maintaining the current revenue base accounting for supported administration.....	21
4.1.4	Increase the threshold to poverty line plus 30 per cent, with offsetting fee increase.....	21
4.2	Options considered in the RIS.....	22
4.2.1	Assessment criteria	22
4.2.2	Option 1: the base case – no regulations and no fee.....	23
4.2.3	Option 2: current arrangement - income threshold to pay the fee set at poverty line	25
4.2.4	Option 3: income threshold to pay the fee set higher than the poverty line to recognise the additional cost burden of disability	27
4.2.5	Option 4: Full recovery of administration order costs	29
4.2.6	Determining the preferred option.....	31
5.	Evaluation Plan and implementation.....	32
5.1	Implementation	32
5.2	Evaluation	32
6.	Consultation.....	33



1. Executive Summary

1.1 Overview

The *Guardianship and Administration Act 2019* (the GAA) made the most significant changes to Victoria's guardianship and administration laws in 30 years. It provides a modern framework to protect the rights of adults whose decision-making capacity may be impaired to make and participate in the decisions that affect their lives. The GAA commenced on 28 February 2020.

In Victoria, guardianship and administration orders are made under the GAA by the Victorian Civil and Administrative Tribunal (VCAT) in the Guardianship List. The VCAT Guardianship List makes protective orders under the GAA and other legislation. The most common orders – guardianship and administration orders – involve appointing substitute decision-makers for adults who are unable to make decisions for themselves:

- guardians can make personal and lifestyle decisions, such as living arrangements, work arrangements and access to people and services, on behalf of an individual with impaired capacity.
- administrators can make financial and legal decisions related to the estate of a person with impaired capacity, such as banking, paying bills or selling property.

VCAT's Guardianship List also makes orders about enduring powers of attorney, medical treatment decisions and advance care directives.¹ In 2019-20, the VCAT Guardianship List heard 12,981 guardianship and/or administration matters.²

There is no fee for making an application to VCAT about any matter in the Guardianship List. This acknowledges the strong public benefit of this jurisdiction and the need to avoid disincentivising this service, as well as the community expectation that individuals who are at risk of neglect, abuse and exploitation are able to access adequate protective arrangements.

The GAA provides for VCAT to collect an annual fee from each estate subject to an administration order. The GAA does not provide for a similar fee to be collected in relation to guardianship orders.

Therefore, this Regulatory Impact Statement (RIS) relates to the proposed Guardianship and Administration (Fees) Regulations 2022 (the proposed regulations), which will set the annual VCAT fee for an estate subject to an administration order. No fee can be charged in relation to a guardianship order.

The proposed regulations will replace the current VCAT fee arrangement, which expires on 28 February 2022.

The objective of this RIS is to consider an appropriate level and structure for this annual fee. The fee must balance the Victorian Government's policy objectives on guardianship (including access to justice considerations) and cost recovery. Therefore, the RIS considers:

- the capacity of an estate of a represented individual to pay the fee
- VCAT's capacity to provide services to the community as a low cost, accessible, efficient and independent tribunal delivering high quality dispute resolution processes.

Currently, the annual fee to be paid to VCAT by an estate subject to an administration order is determined by the represented person's fortnightly income as follows:

¹Victorian Civil and Administrative Tribunal, *VCAT Annual Report 2019-2020*, p 58. Accessible via: <https://www.vcat.vic.gov.au/news/vcat-annual-report-2019-20-now-available>

² Victorian Civil and Administrative Tribunal, *VCAT Annual Report 2019-2020*, p 17. Accessible via: <https://www.vcat.vic.gov.au/news/vcat-annual-report-2019-20-now-available>

- for those estates with a fortnightly income of less than \$844, there is no fee.
- for those estates with a fortnightly income of \$844 or more, the fee is set at 9 fee units (currently a total of \$135.30 in 2021-22).

This RIS considers four possible fee options and finds that a fortnightly income threshold approach continues to be the preferred fee option.

1.2 Problem to be addressed

VCAT receives funding through the State Budget and through revenue raised by the charging of fees for certain services.

VCAT has advised that the total attributable expenditure for the Guardianship List was \$6.335 million in 2020-21. The annual fee generated \$1.840 million in revenue in 2020-21 towards the operating costs of the Guardianship List.

The current fee structure will expire in February 2022. If new regulations are not in force at this time, VCAT will not be able to charge the annual fee, resulting in a loss of revenue that will compromise VCAT's ability to provide services.

1.3 Objective of the proposed regulations

The objective of the proposed regulations is to set an annual fee for estates subject to administration orders that:

- provides a fair contribution from represented individuals towards the costs incurred by VCAT in determining administration matters (balance public and private contribution)
- is affordable for individuals and do not impose additional financial hardship (equity)
- is simple for administrators of estates to understand and pay (simplicity), and for VCAT to administer (efficiency).

1.4 Assessment Criteria

The RIS uses the following criteria and weighting to assess the fee options:

Criterion	Weighting
Equity	35%
Efficiency	35%
Simplicity	15%
Balance of public and private contribution	15%

The highest weighted criteria are equity and efficiency, reflecting the importance of these two considerations in setting a fee. Other relevant criteria include simplicity and the balancing of public and private contributions to a benefit.

An explanation of each criteria is provided in section 4.2.1 of this RIS.

1.5 Fee Options

This RIS assesses options for the annual fee payable to VCAT from estates subject to administration orders. No fees can be charged in relation to guardianship orders.

Following an initial assessment of eight potential options, four fee options progressed to detailed assessment. An overview of the four viable fee options follows.

Further information about fee options that were considered not viable is at section 4.1 of this RIS.



1.5.1 Option 1: the base case - no regulations and no fees. Not preferred.

Under this option, the current fee regulations would be allowed to lapse in February 2022 with no replacement. Without regulations setting the fee structure, VCAT would not have the ability to charge a fee to estates subject to administration orders.

This option creates a revenue shortfall for VCAT, which would degrade VCAT's services in the Guardianship List and place pressure on VCAT's ability to hear guardianship and administration applications within the 30-day legislative requirement.³

1.5.2 Option 2: current arrangement - income threshold to pay the fee set at the poverty line. Preferred.

Option 2 is a continuation of the current fee arrangement: 9 fee units (\$135.30 in 2021-22), with an updated threshold to reflect the latest poverty line (for a single person not in the workforce, the poverty line at the time of writing is \$929.76 a fortnight).⁴

Revenue under this option is estimated at around \$1.8 million per year, similar to current revenue, with some growth in revenue anticipated over the 10 years due to population growth.

This is the preferred option because it ensures VCAT continues to receive sufficient revenue to maintain service levels in the Guardianship List, while also ensuring that the most vulnerable members of the community (in terms of income hardship) are able to access the service.

Persons experiencing financial hardship would continue to be able to apply to VCAT for a fee waiver. If fee waiver is approved, then no fee would be payable.

1.5.3 Option 3: income threshold to pay the fee set higher than the poverty line to recognise the additional cost burden of disability. Not preferred.

Option 3 proposes to maintain the current 9 fee units, with an increase to the threshold of 30 per cent above the poverty line to recognise the additional cost burden associated with living with a disability.

The strength of this option is in the treatment of equity considerations, as it increases the financial threshold for when fees are payable.

However, the total revenue to VCAT is estimated at \$0.658 million per year (in 2020-21 terms), with some growth in revenue anticipated over 10 years due to population growth. This equates to a fall in fee revenue of around \$1 million annually, which could lead to service reductions in the Guardianship List if an alternative funding source is not available.

Persons experiencing financial hardship would continue to be able to apply to VCAT for a fee waiver. If fee waiver is approved, then no fee would be payable.

1.5.4 Option 4: full cost recovery of administration order costs. Not preferred.

Option 4 sets the fee to achieve full recovery of administration orders costs to VCAT in managing the Guardianship List. The GAA allows for VCAT to collect revenue from administration fees up to the value of the cost of the Guardianship List. However, Option 4 provides for the recovery of the cost of administration orders only.

³ Section 28 of the GAA

⁴ See Table 1 of the Melbourne Institute, *Poverty Lines: Australia – December 2020 Quarter*. Accessible via: https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0009/3792456/Poverty-Lines-Australia-December-2020.pdf



Like Option 2, this option sets a threshold for paying the fee at the poverty line and fee waiver arrangements would continue to apply. The fee unit would be increased to 18 fee units (\$270.50 in 2021-22) to achieve full cost recovery.

The strength in this option is that it provides full cost recovery to VCAT in managing administered estates, freeing up resources to be made available elsewhere in the Guardianship List.

Weaknesses to this option include a likely increase in waiver applications (and associated administration costs) due to the increased financial burden on eligible represented individuals. Additionally, full cost recovery shifts the cost burden to private parties, which does not account for the public benefits of administration orders.

1.6 Determining the preferred option

The four options have been scored against criteria designed to reflect the overall objectives of the proposed regulations.

The scoring scale ranges from -10 to 10, where 0 represents the base case (Option 1). Negative scores indicate that the option is worse than the base case, and positive scores indicate that the option is better than the base case.

The score is calculated based on the strengths and weaknesses of each fee option against each criterion, as compared to the base case. The scores are then adjusted according to the weighted percentage given to each criteria, providing each fee option with an overall score.

The fee option with the highest score is the preferred fee option. This was Option 2.

The table below summarises this assessment.



1.6.1 Table: summary of assessment of options

Criterion	Option 1: No fee (base case)	Option 2: Current fees (poverty line threshold)	Option 3: Current fee (higher threshold)	Option 4: Full cost recovery
1. Equity (35%) Does not create undue financial hardship on represented individuals (also an element of horizontal equity in terms of other states/territories).	<u>Strengths:</u> <ul style="list-style-type: none"> No fee creates no financial burden for represented individuals. 	<u>Strengths:</u> <ul style="list-style-type: none"> Those below the poverty line do not have to pay fees. Financial hardship waivers can be sought. No increase to fee units. <u>Weaknesses:</u> <ul style="list-style-type: none"> No allowance for the cost burden of disability Does not recognise that administration orders are not a discretionary choice. 	<u>Strengths:</u> <ul style="list-style-type: none"> Higher threshold provides an allowance for the cost burden of disability. Financial hardship waivers can be sought. No increase to fee units. <u>Weaknesses:</u> <ul style="list-style-type: none"> Does not recognise that administration orders are not a discretionary choice. 	<u>Strengths:</u> <ul style="list-style-type: none"> Those below the poverty line do not have to pay fees. Financial hardship waivers can be sought. <u>Weaknesses:</u> <ul style="list-style-type: none"> No allowance for the cost burden of disability Imposes increased financial burden on those required to pay the fee. Does not recognise that administration orders are not a discretionary choice.
Score	0	-4	-2	-6
2. Efficiency (35%) Sustainability of VCAT to maintain services to the community (ensuring VCAT can continue to resolve disputes in a timely, cost-effective and efficient way).	<u>Weaknesses:</u> <ul style="list-style-type: none"> Significant revenue shortfall to VCAT, jeopardising sustainability of services. 	<u>Strengths:</u> <ul style="list-style-type: none"> Maintains the current revenue base for VCAT, enabling continuity of VCAT services. 	<u>Strengths:</u> <ul style="list-style-type: none"> Lower fee administration costs from less waiver application processing and fee compliance <u>Weaknesses:</u> <ul style="list-style-type: none"> Revenue shortfall of around \$1 million annually, which would degrade VCAT's services in the Guardianship List unless an alternative funding source is identified. 	<u>Strengths:</u> <ul style="list-style-type: none"> The cost of administration orders fully met by fees, which can free up resourcing for other VCAT services.
Score	0	8	3	10



Criterion	Option 1: No fee (base case)	Option 2: Current fees (poverty line threshold)	Option 3: Current fee (higher threshold)	Option 4: Full cost recovery
3. Simplicity (15%) Fee that is simple for administrators to understand and pay from the represented person's estate, and for VCAT to administer.	Strengths: <ul style="list-style-type: none"> Simple – no fee applies for anyone. 	Strengths: <ul style="list-style-type: none"> Essentially the same as the current fee structure, thus, familiar to existing administrators. Weaknesses: <ul style="list-style-type: none"> Existence of fee creates some degree of complexity for both VCAT and administrators for an estimated 75 per cent of estates under administration required to pay the fee.⁵ 	Strengths: <ul style="list-style-type: none"> Same fee units with lower number of estates under administration paying the fee. Weaknesses: <ul style="list-style-type: none"> Existence of fee creates some degree of complexity for both VCAT and administrators for an estimated 25 per cent of estates under administration required to pay the fee.⁶ 	Strengths: <ul style="list-style-type: none"> Fee threshold remains the same, which is familiar to existing administrators. Weaknesses: <ul style="list-style-type: none"> Higher fee likely to increase waiver applications requiring more resourcing from VCAT to assess and process. Higher fee could lead to an increase in non-compliance requiring more VCAT resources for enforcement.
Score	0	-5	-3	-8
4. Balance of public private contribution (15%) Recognises there are private and public benefits associated with administration orders and shares the associated costs accordingly.	Weaknesses: <ul style="list-style-type: none"> No private contribution, which does not acknowledge the private benefits of VCAT's services 	Strengths: <ul style="list-style-type: none"> Recognises both public and private benefits. Weaknesses: <ul style="list-style-type: none"> Private and public contribution evenly split, which does not sufficiently acknowledge the significant role of government in protecting people with disability from harm. 	Strengths: <ul style="list-style-type: none"> Best aligns the balance of public and private aspects associated with disability. 	Weaknesses: <ul style="list-style-type: none"> No public contribution which does not acknowledge the public benefits of VCAT's services.
Score	0	10	5	0
Total score [weighted]	0	2.15	0.65	0.2
Effect on VCAT's annual revenue.	Significant decrease (around \$1.8 million) Total fee revenue = 0	No change Total fee revenue = around \$1.8 million	Significant decrease (around \$1 million) Total fee revenue = \$0.658 million	Significant increase (around \$1.8 million) Total fee revenue = \$3.6 million

⁵ Estimate based on de-identified incomes recorded by VCAT of represented individuals with administration orders in 2017-2018.

⁶ Estimate based on de-identified incomes recorded by VCAT of represented individuals with administration orders in 2017-2018.



2. The Guardianship and Administration Act 2019 (GAA)

2.1 Summary

The GAA replaces the *Guardianship and Administration Act 1986* (the old Act). The GAA makes the most significant changes to Victoria's guardianship and administration laws in 30 years. The GAA protects the rights of adults with impaired decision-making capacity to make and participate in decisions that affect their lives.

The GAA implements many recommendations made by the Victorian Law Reform Commission in its 2012 Guardianship Report⁷ and complements recent reforms in the *Powers of Attorney Act 2014* and the *Medical Treatment Planning and Decisions Act 2016*.

The GAA provides a modern framework for the appointment of a guardian or administrator for an adult who has impaired capacity to make personal or financial decisions, including:

- guardians can make personal and lifestyle decisions, such as living arrangements and health care, on behalf of an individual with impaired capacity.
- administrators can make financial and legal decisions related to the estate of a person with impaired capacity, such as banking, paying bills or selling property.

The GAA also provides legal recognition of supported decision-making, including through the appointment of a supportive guardian or a supportive administrator.

VCAT must generally commence hearing an application for a guardianship order or administration order within 30 days of the application being received by VCAT.⁸

2.1.1 Powers to set fees under the GAA

The Governor in Council may make regulations under the GAA to set annual fees to be paid by estates subject to an administration order.⁹ There is no similar power for the charging of fees for guardianship order activities.

Fees may be prescribed in relation to a particular class or classes of estates, and may authorise VCAT to waive fees in particular cases or classes of cases.¹⁰

The total fees collected in a year must not exceed the amount required to meet the annual costs and expenses of VCAT in relation to proceedings under the GAA each year.¹¹

The current fees, as set in the Guardianship and Administration (Fees) Regulations 2019 (the Fee Regulations), were made under the old Act and preserved by the Guardianship and Administration (Fees) Transitional Regulations 2020 for two years. This fee arrangement will expire on 28 February 2022, when the transitional regulations expire.

⁷ Victorian Law Reform Commission, *Guardianship Final Report 24*, 18 April 2012, accessible at: <https://www.lawreform.vic.gov.au/project/guardianship/>

⁸ Section 28 of the GAA

⁹ Section 194(1)(b) of the GAA

¹⁰ Section 194(3)(c) of the GAA

¹¹ Section 194(4) of the GAA



2.1.2 Operational impacts on VCAT due to the changes in the GAA

VCAT has advised the Department that the operational impacts of the changes in the GAA, outlined in section 2.2 below, have been significant in terms of VCAT's registry effort and VCAT Members' time. For example:

- the VCAT Guardianship Specialist team is required to take proactive steps to encourage the proposed represented person to attend the hearing. This requires contacting the applicant, other parties, and the proposed represented person to discuss their will and preferences.
- more work is required of the VCAT Human Rights Division Registry team in arranging hearings to facilitate the attendance of the represented person. This includes finding a suitable date and time for the represented person to attend, and to ensure the hearing is conducted in a place and manner appropriate for the person. For example, this might be face to face, in a hospital, a regional venue, via video conference or by telephone.
- the VCAT Human Rights Division Registry team are providing increased assistance to users of the Guardianship List, and also to the Guardianship Specialist Team to meet the increased workload.
- hearings take longer as a result of the participation/attendance of the represented person.

2.1.3 Operational impacts on VCAT due to the COVID-19 pandemic

The COVID-19 pandemic had a disruptive impact on the operations of both VCAT and the Office of the Public Advocate (OPA) during 2019-2020 and 2020-21. For example, in its 2019-20 annual report, VCAT reported the impacts of the pandemic to include ceasing face-to-face hearings to protect VCAT staff and users, triaging all cases for urgency, immediately transitioning hearings to telephone or videoconference, and adjourning all listed cases.¹² In 2019-20, VCAT had six per cent fewer cases lodged and finalised nine per cent fewer cases, and VCAT's Guardianship List had eight per cent fewer cases lodged than previous years.¹³

At the same time, the GAA's commencement has also caused operational changes to the management of the Guardianship List. It is difficult to discern the impacts of the new requirements under the GAA from those that have been caused by the COVID-19 pandemic. For this reason, this RIS proposes that this fee be evaluated as part of the larger VCAT mid-term fee review, when it occurs.

2.2 A modern framework for guardians and administrators

2.2.1 A new definition of "decision-making capacity"

The GAA states that a person is presumed to have decision-making capacity unless there is evidence to the contrary. The GAA recognises that a person may have decision-making capacity for some matters and not others, and that a person has decision-making capacity if they can make decisions with practicable and appropriate support.¹⁴

VCAT must apply the definition of decision-making capacity when deciding whether a guardianship or administration order is required.

¹² Victorian Civil and Administrative Tribunal, *Annual Report 2019-2020*, p 24

¹³ Victorian Civil and Administrative Tribunal, *Annual Report 2019-2020*, p 17

¹⁴ Section 5 of the GAA



2.2.2 Respecting the represented person’s “will and preference”

The GAA provides guidance to guardians and administrators to ensure the will and preferences of the represented person are reflected in decision-making as far as possible.¹⁵ The represented person’s will and preferences should only be overridden if it is necessary to do so to prevent serious harm to the represented person.¹⁶

2.2.3 Tailored and proportionate orders

The GAA enables VCAT to make guardianship and administration orders for an adult with disability but requires the order be proportionate and tailored to the person’s circumstances.¹⁷ In particular, the GAA:

- provides that VCAT may only make an order if satisfied of the following:
 - the person, because of a disability, does not have decision-making capacity in relation to a specific personal matter or a financial matter
 - the person is in need of a guardian or administrator
 - the order will promote the person’s personal and social wellbeing.¹⁸
- requires VCAT to only confer a power on a guardian or administrator that is necessary or desirable for the purposes of promoting the represented person’s personal and social wellbeing.¹⁹
- requires VCAT to conduct regular reassessment of orders.²⁰

2.3 Recognition of supported decision-making

2.3.1 The GAA recognises supportive guardians and supportive administrators

The GAA promotes supported decision-making as a less restrictive alternative to substituted decision-making, and provides for the appointment of supportive guardians or supportive administrators. Supportive guardians or supportive administrators help an adult with disability act on their own decisions about lifestyle matters and financial affairs respectively.

The new definition of decision-making capacity recognises that a person has decision-making capacity if it is possible for them to make a decision with practicable and appropriate support.²¹ Supported decision-making enables VCAT to appoint a support person in a more limited role than a guardian or administrator, but who supports a person with impaired decision-making capacity to make and give effect to some, or all, of their own decisions.

Support for decision-making often comes from family members and trusted carers. The appointment of a supportive guardian or supportive administrator acknowledges these relationships while ensuring that a person with disability retains their right to make decisions. The formal supported decision-making appointment framework:

¹⁵ Section 8 of the GAA

¹⁶ Section 9 of the GAA

¹⁷ Section 30 of the GAA

¹⁸ Section 30(2) of the GAA

¹⁹ Sections 38(2) and 46(2) of the GAA

²⁰ Section 159 of the GAA

²¹ Section 5 of the GAA



- gives effect to decisions made by a person with a disability whose ability to make decisions may otherwise be questioned.²²
- provides a supportive guardian or supportive administrator with guidance about their duties and obligations.²³

Community benefits of a formal supported decision-making framework include:

- certainty for third parties about the nature and extent of a supported decision-making arrangement, allowing third parties to deal with a supportive guardian or supportive administrator with confidence.
- greater monitoring and safeguards than informal support arrangements, including review of the appointment by VCAT.²⁴

The supported decision-making framework also aligns with the role of a 'supportive attorney' under the *Powers of Attorney Act 2014*.

2.3.2 No fee is charged for supported administration

The GAA does not allow VCAT to charge a fee for supported administrator appointments.²⁵

VCAT anticipates that supported administration will not impact the total cost of managing the Guardianship List, and nor will it impact the number of administration orders made.

3. Problem analysis

3.1 The problem to be addressed in this RIS

VCAT receives funding through the State Budget and through revenue raised by charging fees for certain services.

VCAT has advised that the total attributable expenditure for the Guardianship List was \$6.335 million in 2020-21. The fee generated \$1.840 million in revenue in 2020-21 towards the operating costs of the Guardianship List.

The current fee structure will expire in February 2022. If new regulations are not in force at this time, VCAT will not be able to charge the annual fee, resulting in a loss of revenue that will compromise VCAT's ability to provide services.

This RIS considers the appropriate level and structure for the annual fee to be paid by estates which are subject to an administration order under the GAA.

The GAA empowers the Governor in Council to make regulations to set the annual fee.²⁶

In Victoria, VCAT continues to play a role in the administration of an estate, including by requiring an administrator to submit an Account by Administrator each year with details of the represented person's financial affairs. This process assists in ensuring that the represented person's finances are well managed. VCAT can also provide advice about a person's role as an administrator, including about matters such as sale of property and major purchases or expenses.

²² Section 93 of the GAA

²³ Section 94 of the GAA

²⁴ As required by section 159 of the GAA

²⁵ Section 194 of the GAA.

²⁶ Section 194 of the GAA



In the 2019 report of the Investigation into State Trustees, the Victorian Ombudsman recommended that the fees be abolished (recommendation 13). In the response to the report, the Department of Justice and Community Safety noted that this RIS will:

... ‘provide an opportunity to investigate whether fees are set at the right level and appropriately respond to the needs of this vulnerable cohort. The [regulatory impact statement] process will allow the department to model the impact of implementing recommendation 13 and seek comment on the proposal from external stakeholders across government and the community.’²⁷

Therefore, an appropriate level and structure of fees will balance the Ombudsman’s recommendation to abolish fees, with access to justice and VCAT’s ability to recover a portion of the costs of providing administration orders.

3.1.1 The current fees

The current fee regulations, the Guardianship and Administration (Fees) Regulations 2019, allow for an annual fee of 9 fee units (\$135.30²⁸ in 2021-2022) to be charged on all estates which have a fortnightly income of \$844²⁹ or more. In the 2020-21 financial year, \$1.840 million in fees were collected.³⁰

VCAT can waive this fee if paying it would cause ‘undue hardship’ to the person in respect of whom an administration order has been made.

Table: Current annual fee for administration of an estate, based on the represented person’s fortnightly income

Fortnightly income	Annual fee payable
Less than \$844	\$0
\$844 or more	9 fee units

The threshold fortnightly income is approximately equivalent to the poverty line for a single person not in the workforce, as calculated by the Melbourne Institute of Applied Economic and Social Research and published in its quarterly *Poverty Lines: Australia* publication.³¹ The inclusion of a threshold acknowledges the equity consideration of avoiding additional financial burden, with the contribution to the costs of VCAT’s services in determining administration matters coming from those with capacity to pay.

The most recent poverty line figure (at time of writing) for a single person not in the workforce is \$929.76 a fortnight.³²

²⁷ Victorian Ombudsman, *Investigation into State Trustees*, June 2019. Accessible via: <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-state-trustees/#full-report>

²⁸ Victorian Government, Department of Treasury and Finance, *Indexation of Fees and Penalties 2021-22*, from 1 July 2021 to 30 June 2022, the value of a fee unit is \$15.03. Accessible via: <https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties>

²⁹ This figure is calculated according to the poverty line.

³⁰ Guardianship and Administration (Fees) Regulations 2019 r 8; fees are collected in December for the preceding financial year – figure represents fees collected in 2018-19 for orders in place in 2017-18.

³¹ Melbourne Institute, *Poverty Lines: Australia – December 2020 Quarter*. Accessible via: <https://melbourneinstitute.unimelb.edu.au/publications/poverty-lines>

³² Melbourne Institute, *Poverty Lines: Australia – December 2020 Quarter*. Accessible via: https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0009/3792456/Poverty-Lines-Australia-December-2020.pdf



3.1.2 The current regulations

The current fee regulations (Guardianship and Administration (Fees) Regulations 2019) were made under the old Act. Transitional regulations were made with the commencement of the GAA to continue the operation of the regulations for a further two years. This has enabled VCAT to continue to collect a fee from estates subject to an administration order while this RIS is developed to inform the applicable fees under the GAA. The transitional fee regulations will expire on 28 February 2022, if not revoked earlier.

3.2 Factors to consider in scoping options to address the problem

The following factors have been considered in developing and assessing the fee options:

- Victorian Government pricing principles
- revenue to VCAT
- cost to VCAT in delivering services in administration matters
- represented individuals' capacity to pay.

3.2.1 Victorian Government pricing principles

The Victorian Department of Treasury and Finance (DTF) publishes the Pricing for Value Guide (the Guide), which establish a whole of government framework ensuring that price-setting is transparent, efficient, effective and consistent with legislative requirements and government policy.³³

The starting principle in the Guide is that agencies should aim to recover the full costs of service provision to promote efficient consumption. Full cost recovery promotes the efficient consumption of services and, in turn, the efficient allocation of resources by sending appropriate price signals about the value of resources that are required to provide the good or service.

However, the Guide recognises that full cost recovery remains one principle among a broad range of principles. There are situations where it may be desirable to recover at less than full cost, or not to recover costs at all. These situations include where:

- pricing at full cost or market rates may conflict with the objective of providing equitable access to government goods and services to the community
- pricing of some goods or services at full cost or market rates may conflict with other public policy objectives that the Government supports.

Equitable access to government services

Adults over the age of 18 years, regardless of disability, are entitled to make their own decisions. Where a person's disability impairs their decision-making ability, they may require others to make decisions on their behalf. Administration orders can better protect individuals from the risk of financial neglect, abuse and exploitation. Therefore, the appointment of administrators for those who are unable to make decisions for themselves is an essential service.

Due to the nature of the rights and responsibilities involved, the appointment of an administrator requires a timely, independent process before an unbiased decision-maker. Such a process is a core function of tribunals and is not suited to privatisation. While a higher court could also provide the service, this would be impractical given the costs and delays associated with court matters.

³³ Department of Treasury and Finance, *Pricing for Value Guide*, 1 July 2021. Accessible via: <https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties>



Therefore, VCAT as a low cost, accessible, efficient and independent tribunal is the most appropriate forum.

It is a principle of the Guide that cost of service provision should be borne by those who benefit from the service. This is also known as the ‘beneficiary pays’ approach, and can be used to identify who should pay for the provision of government goods and services. In general, where users derive private benefit from government goods or services, the user should bear the cost.

Administration orders provide both public and private benefits.

Appointing an administrator is intended to ensure financial decisions reflect the will and preferences of a represented person who is unable to make decisions for themselves. The use of administration orders is desirable in these circumstances. Without an administration order, an individual would be reliant on informal arrangements, or at worst, have no one to make financial decisions on their behalf. Clearly, an administration order confers a private benefit on individuals. However, the represented individuals who require them do not have discretion over their use, and those applying on their behalf should not be disincentivised from doing so.

Ensuring an individual’s financial and legal affairs are appropriately managed avoids further disadvantage and increased reliance on welfare and other government services. This benefit is both private and public.

It should be noted that there is no fee for making an application to VCAT for the Guardianship List. This acknowledges the strong public benefit aspect of this jurisdiction and the need to avoid disincentivising this service, as well as the community expectation that individuals who are at risk of neglect, abuse and exploitation are able to access adequate protective arrangements.

Given the above, the RIS concludes that VCAT’s services in making administration orders confer a combination of public and private benefits.

Other government policy objectives

The introduction of the GAA reflects the importance the Victorian Government places on protecting the rights of individuals living with disability. When an individual does not have decision making capacity, arrangements need to be in place to protect the individual and ensure decisions made on their behalf reflect their will and preferences. In the absence of an enduring power of attorney (financial) (EPoA), it is desirable that an administration order be sought. To this end, imposing a fee may act as a deterrent to obtaining an administration order.

Providing a free service may better encourage the take-up of administration orders. However, this could result in an unsustainable increase in cases and strain on VCAT’s ability to provide quality and timely services. Such an outcome would be undesirable, particularly as more cost-effective mechanisms are available to the public, such as EPoAs.

It is Victorian Government policy to encourage the use of EPoAs. The 2010 Victorian Parliament Law Reform Committee’s Inquiry into Powers of Attorney³⁴ found that powers of attorney provide ‘a flexible, low cost, personal and relatively simple’ process which allows principals (represented individuals) to plan for the future. Many participants in the Inquiry emphasised that powers of attorney promote principals’ rights, autonomy and dignity by empowering them to make arrangements that are preserved for when they are unable to make decisions for themselves. Such arrangements can alleviate distress and preserve the individual’s dignity and independence.

³⁴ Parliament of Victoria, Law Reform Committee, *Inquiry into Powers of Attorney*, 31 August 2010. Accessible via: <https://www.parliament.vic.gov.au/49-lawreform/inquiry-into-powers-of-attorney>



There are clear benefits in the increased use of EPoAs. An EPoA avoids the need for applications to VCAT for administration (and guardianship) orders, reducing demand on the Guardianship List. Given this, applying a fee for administration orders may create a pricing signal to encourage the uptake of EPoAs instead. However, this is likely to be a weak pricing signal at best, given the nature of EPoAs. EPoAs are put in place in case of future loss of decision-making capacity, which may never eventuate. It is not likely that avoiding the administration order fee would be a significant consideration, particularly as community awareness of the fee is likely to be low and therefore not a significant factor in determining whether an EPOA should be made.

Access to justice considerations

Access to justice refers to the ability of all people to engage with the many formal and informal aspects of the justice system and to enjoy the benefits of living in a society governed by the rule of law. Access to justice principles provide for timely and affordable justice, making it easier for people to resolve their disputes.³⁵

Individuals requiring an administration order are often marginalised members of the community who need to be able to access the justice system supports they need, including services provided by VCAT.

3.2.2 Revenue to VCAT from the current fee

In 2020-21, the annual fee generated \$1.840 million in revenue for VCAT. The proceeds of the fee contributed to the costs of VCAT determining administration orders and operating the Guardianship List.

At the start of the new financial year, VCAT collects fees for all administration orders in place in the previous financial year (e.g. collection of fees for 2020-21 commenced soon after 30 June 2021).

	2017-18 \$m	2018-19 \$m	2019-20 \$m	2020-21 \$m
Annual fee revenue	\$1.694	\$1.668	\$1.703	\$1.840

3.2.3 Cost to VCAT in running the Guardianship List

Since the introduction of the GAA, the total attributable expenditure for the Guardianship List has increased to \$6.335 million in 2020-21. This includes both direct costs (salaries, operating expenses) and indirect costs (corporate functions shared between the various VCAT lists, including registry services and rent) that represent a component of VCAT overheads. The largest cost is salaries.

³⁵ Victorian Government, Department of Justice and Regulation, *Access to Justice Review*, August 2016. Accessible via: https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage/files/9414/8601/7548/Access_to_Justice_Review_-_Report_and_recommendations_Volume_2.PDF.



	2017-18 \$m	2018-19 \$m	2019-20 \$m	2020-21 \$m
Salaries	\$4.715	\$5.148	\$5.426	\$5.399
Operating	\$1.197	\$1.014	\$1.069	\$0.810
Other (indirect costs)	\$0.152	\$0.066	\$0.023	\$0.126
Total cost	\$6.064	\$6.228	\$6.518	\$6.335

3.2.4 Impact of supportive administrator appointments

As outlined in section 2.3 of this RIS, VCAT can appoint a supportive administrator under the GAA. VCAT expects to undertake a more frequent reassessment of supportive administration orders (annually rather than every three years for administration orders) to ensure the arrangement remains appropriate. However, supported administration is otherwise likely to require less ongoing involvement of VCAT than is required with an administration order.

Given the appointment of a supportive administrator is a new VCAT power, no historical data exists to estimate how many supportive administrator appointments are likely to be made each year. However, VCAT advised that few supportive administration orders had been made at the time of writing this RIS.

VCAT also advised that supportive administration orders and administration orders serve different purposes. Before supportive administrative orders were available, a supported person may have continued their informal arrangement, or made supportive attorney arrangements under the *Powers of Attorney Act 2014*, rather than applying for an administration order.

Therefore, VCAT anticipates the cost impact of the introduction of supportive administrator arrangements to be negligible, as the number of administration orders will not be affected.

3.2.5 A represented individual's capacity to pay

A large proportion of represented individuals are on low incomes, with many receiving the Disability Support Pension (DSP). The table below shows the estimated proportion of represented persons on each income bracket, based on VCAT data of recorded incomes of represented persons with administration orders.³⁶

Annual Income	Fortnightly Income	Represented persons
less than \$20,000	less than \$767	20%
\$20,000 - \$24,999	\$767 - \$959	22%
\$25,000 - \$29,999	\$959 - \$1,151	32%
\$30,000 - \$34,999	\$1,151 - \$1,342	16%
\$35,000 - \$39,999	\$1,342 - \$1,534	4%
\$40,000 - \$44,999	\$1,534 - \$1,726	2%
\$45,000 - \$49,999	\$1,726 - \$1,918	1%
\$50,000 and above	above \$1,918	2%

³⁶ Estimates are based on administration order data held by VCAT for 2017-18.



This means just under three-quarters of represented individuals are estimated to have annual incomes of less than \$30,000 (\$1,153 fortnightly). This compares to the most recent Australian Bureau of Statistics finding that the average personal income in Australia is \$49,805 per year (\$1,916 fortnightly).³⁷

Calculating an appropriate income threshold for payment of the fee

The current regulations set a threshold for payment with reference to the poverty line. The poverty line is based on the disposable income required to meet basic needs, and therefore is a relative measure of poverty.³⁸ As real incomes in the community rise, so too will the poverty line.

The DSP was also considered as an alternative reference point as many represented individuals receive the DSP. The current maximum single basic rate for the DSP is \$868.38 per fortnight.³⁹ Supplements (including the Pension Supplement and Energy Supplement) can increase an individual's income on the DSP to \$952.70. The current poverty line for a single person (including housing) is \$929.76.⁴⁰

However, using the DSP as the threshold for the annual fee was not pursued because:

- receiving the DSP does not necessarily reflect an individual's capacity to pay
- should the DSP not rise in line with meeting basic needs, an increasing number of individuals with limited capacity to pay would be required to pay the fee, particularly those reliant on income from the DSP⁴¹
- it would be anomalous for VCAT to link requirements to pay fees to a benefit such as the DSP, as VCAT's fee waiver policy does not solely refer to the DSP. Other factors are relevant in VCAT determining financial hardship.

The additional cost burden of living with a disability

People with disabilities generally face higher living costs over and above the broader community due to such factors as needing assistance or assistive devices, greater medical expenses, higher transportation costs and housing modifications. Given these costs and factors, the poverty line alone may not be representative of financial hardship for individuals with disability. The OPA has suggested that the poverty line be amended upwards by 30 per cent to account for the additional cost burden of living with a disability.⁴²

3.3 Regulatory objective of the solution to the problem

Taking into account the factors to be considered (paragraphs 3.2.1 to 3.2.5), the regulatory objective is to set an annual fee in relation to an estate of a represented individual that:

- provides a fair contribution from the represented individual to VCAT's costs
- is affordable for represented individuals and does not impose additional financial hardship

³⁷ Australian Bureau of Statistics, *Personal Income in Australia 2017-18*. Accessed via: <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/personal-income-australia/2011-12-2017-18>

³⁸ Melbourne Institute, *Poverty Lines: Australia – December 2020 Quarter*. Accessible via: https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0009/3792456/Poverty-Lines-Australia-December-2020.pdf

³⁹ Services Australia, *Disability Support Pension, Maximum Payment Rates*. Accessible via: <https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/how-much-you-can-get/payment-rates>

⁴⁰ Melbourne Institute, *Poverty Lines: Australia – December 2020 Quarter*. Accessible via: https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0009/3792456/Poverty-Lines-Australia-December-2020.pdf

⁴¹ Fee waivers for financial hardship would continue to apply

⁴² See argument by the Victorian Public Advocate in *KLC (No 2) (Guardianship)* [2009] VCAT 831 (7 May 2009); Sanders P, *The costs of disability and the incidence of poverty* (2006) Discussion Paper No. 147, The Society Policy Research Centre, University of New South Wales.



- is simple for administrators of estates to understand and pay
- is simple for VCAT to administer.

4. Assessment of regulatory options

Option analysis in a RIS has two steps:

- (1) Consideration of a broad range of options. Eight options were considered in this RIS, four were considered non-viable.
- (2) Detailed analysis of at least three options. This RIS considers four options in detail.

4.1 Non-viable options: considered, but not analysed further

Several regulatory options were considered, but not all options were considered viable to proceed to further analysis. The options which were not considered viable included:

- full recovery of the total cost of the Guardianship List
- full cost recovery of administration orders only with one flat fee (no income threshold)
- maintaining the current revenue base accounting for supported administration
- increasing the threshold for when a fee is payable to the poverty line plus 30 per cent, with offsetting fee increase.

The reasons why these options are considered non-viable are outlined below.

4.1.1 Full recovery of the total cost of the Guardianship List

The GAA enables VCAT to charge annual fees in relation to estates that are the subject of an administration order.⁴³ However, the GAA does not enable fees to be charged for other functions of the Guardianship List, such as making guardianship and administration orders, or supported administration orders.⁴⁴ Therefore, any cost recovery of the Guardianship List is only possible through this annual fee.

The GAA also specifies that the amount of fees collected in any year must not exceed the total amount required to meet VCAT's costs and expenses for all proceedings under the GAA in that year.⁴⁵ This requirement sets a limit on the fee.

In 2020-21, the cost of the Guardianship List was approximately \$6.355 million, with the costs of administration orders comprising approximately \$3.376 million.

To recover the full cost of the Guardianship List (while maintaining an income threshold for the fee set at the poverty line), the fee would need to be set at approximately \$467 per represented individual in 2021-2022 (31 fee units),⁴⁶ compared with the current \$135.30 (9 fee units). This represents an increase in the fee of around 3.4 times.

Such a significant increase raises issues regarding capacity to pay, particularly for represented individuals whose income is marginally above the poverty line. Raising the threshold, or creating a stepped threshold, would require raising the fee further. Adding a step or scaled approach would also increase complexity in fee administration and, consequently, fee collection costs. It is

⁴³ Section 194(1)(b) of the GAA

⁴⁴ Section 194 of the GAA

⁴⁵ Section 194(4)(b) of the GAA

⁴⁶ Based on the current estimate of eligible fee payers of 13599.



also likely to increase fee waiver applications, adding to fee waiver assessment and processing costs for VCAT.

For these reasons, full cost recovery of the Guardianship List has not been further analysed.

4.1.2 Full cost recovery of administration orders only with one flat fee (no income threshold)

In 2021-20, administration order services cost VCAT approximately \$3.376 million. This option achieves full recovery of this cost (similar to Option 4) by charging all represented individuals a flat fee regardless of capacity to pay.

Under this option, every represented individual would pay a fee of approximately \$195.40 in 2021-2022 (13 fee units). The fee would need to be set higher still to allow for the revenue loss from VCAT waiving fees in circumstances of financial hardship.

The likely effect is that the waiver would become a de facto threshold, with added processing costs for VCAT. But without the ability for VCAT to waive fees, non-payment rates would increase significantly, increasing fee collection costs.

Given equity and capacity to pay considerations, along with the potential overall increase in fee administration costs, this option has not been considered for further analysis.

4.1.3 Maintaining the current revenue base accounting for supported administration

The GAA does not enable a fee to be charged for estates subject to supportive administration. Therefore, to maintain the forecasted annual revenue base of \$1.840 million with the introduction of supportive administration, the fee may need to be increased to take into account cases where supported administration is used instead of an administration order.

Given the introduction of supportive decision-making is recent, there is not yet data that captures its use. Therefore, setting the annual fee to maintain the current revenue could only be based on estimated uptake of supportive administration orders. However, this would be unreliable and inaccurate, particularly given VCAT's advice that few supportive administration orders have been made to date and that supportive administration orders and administration orders serve different purposes.

4.1.4 Increase the threshold to poverty line plus 30 per cent, with offsetting fee increase

Increasing the threshold to 30 per cent above the poverty line would result in the number of represented individuals above the threshold where the annual fee is payable falling from 73 per cent to 28 per cent. This would result in a substantial decrease in fee revenue for VCAT.

The fee could be increased to offset the decrease in the number of estates required to pay the fee. To fully offset, the fee would need to be increased from 9 fee units (\$135.30 in 2021-22) to around 23 fee units (\$345.69 in 2021-22), an increase of 2.5 times.

However, increasing the fee in these circumstances is counter-intuitive to the purpose of raising the threshold to acknowledge the additional cost burden of disability. Those represented individuals whose income is above this threshold still face the additional cost burden of living with disability and do not have the additional capacity to pay a higher fee. The higher fee would also be disproportionately concentrated on a small number of represented individuals, significantly increasing their contribution to the cost of the Guardianship List without a corresponding increase in benefits to those individuals. Therefore, this option has not been considered for further analysis. Option 3 considers increasing the threshold without increasing the fee.



4.2 Options considered in the RIS

The options considered with this RIS are as follows:

- Option 1: the base case – no regulations and no fee.
- Option 2: the current arrangement - income threshold to pay the fee set at poverty line.
- Option 3: income threshold to pay the fee set higher than the poverty line to recognise the additional cost burden of living with a disability.
- Option 4: full recovery of administration order costs.

4.2.1 Assessment criteria

The RIS assesses and compares the options against criteria as weighted in the table below:

Criterion	Weighting
Equity	35%
Efficiency	35%
Simplicity	15%
Balance of public and private contribution	15%

Equity: no additional financial hardship on represented individuals

This criterion receives the equal highest weighting, reflecting the importance that the Victorian Government places on protecting the rights of individuals with disability. A fee should not act as a deterrent to applications where the represented individual needs financial and legal decisions to be made on their behalf.

Therefore, this criterion assesses the financial impact of each fee option on a represented individual's capacity to pay. The personal income of people who require administration orders is lower on average than the general population. These individuals also face additional cost burdens associated with living with a disability. It is therefore critical that financial hardship is not a barrier or disincentive for seeking an administration order.

Efficiency: ability of VCAT to continue to provide critical services to the community

This criterion assesses the impact of each fee option on VCAT's capacity to provide services to the community as a low cost, accessible, efficient and independent Tribunal delivering high quality dispute resolution processes.

Fees form an important component of VCAT's funding model. A shortfall in funding would degrade VCAT's services in the Guardianship List and place further pressure on VCAT to hear applications within the 30 days legislative requirement.⁴⁷

Simplicity: a fee structure that is easy for administrators to understand and pay from the represented person's estate, and minimises VCAT's processing costs

This criterion assesses the fee options in terms of simplicity for administrators to understand, and for VCAT to administer.

Any fee will create some degree of complexity compared to a no fee option (the base case). However, each option minimises complexity by having only one threshold, if any, and one set fee.

⁴⁷ Section 28 of the GAA



Multiple fee levels would not be worth the additional effort to administer them, as it would create unnecessary complexity for administrators and VCAT registry.

The expected number of fee waiver applications for each option are also considered in this criterion.

Balance of public and private contribution

This criterion acknowledges that administration orders have both public and private benefits and assesses how each fee option matches contributions to costs against those benefits.

Appointing an administrator is intended to ensure financial decisions are made reflect the will and preferences of a represented person who is unable to make decisions for themselves. The use of administration orders is desirable in these circumstances. Without an administration order, an individual would be reliant on informal arrangements, or at worst, have no one to make financial decisions on their behalf. Clearly, an administration order confers a private benefit on individuals. However, the represented individuals who require them do not have discretion over their use, and those applying on their behalf should not be disincentivised from doing so.

Ensuring an individual's financial and legal affairs are appropriately managed avoids further disadvantage and increased reliance on welfare and other government services. This benefit is both private and public.

It should be noted that there is no fee for making an application to VCAT for the Guardianship List. This acknowledges the strong public benefit of this jurisdiction and the need to avoid disincentivising this service, as well as the community expectation that individuals who are at risk of neglect, abuse and exploitation can access adequate protective arrangements.

4.2.2 Option 1: the base case – no regulations and no fee

Under this option, the current fee regulations would be allowed to lapse in February 2022 with no replacement. Without regulations setting out the fee structure, VCAT would not have the ability to charge a fee.

This option aligns with the recommendation of the Victorian Ombudsman in the 2019 report of the Investigation into State Trustees.⁴⁸

No annual fee

Under this option, there would be no requirement to set and collect annual fees or to define the income threshold. Fee waivers would also not be required.

Fortnightly income	Annual fee payable
N/A	No fee

Assessment of Option 1

This option would result in the loss of revenue to VCAT for the Guardianship List of approximately \$1.840 million per year in 2020-21 dollars. The foregone revenue would grow each subsequent year as the number of administration orders is expected to increase.⁴⁹

⁴⁸ Recommendation 13 of the Victorian Ombudsman's report which can be accessed here: <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-state-trustees/>

⁴⁹ The net present value (NPV) of the financial impact on VCAT would be \$13.9 million over a 10-year period, which includes revenue loss (present value \$14.9 million) less the avoided cost of administering the fee (present cost \$1 million), compared to the current fee structure.



There would be a small expense reduction offset of approximately \$0.120 million per year as there would be no costs associated with processing fees and waivers.

		Option 1: Base case - no fee	
		\$m	\$m
Administration orders		3.376	
	Comprising:		
	Fee admin costs		-
	Other operating costs		3.376
Guardianship orders		2.959	
TOTAL LIST COSTS			6.335
Fee revenue			-
Cost recovery			
	% of Administration order costs		0%
	% of total List costs		0%

Analysis against assessment criteria

Option 1 is the base case. In a RIS, the base case is given a score of zero for each criteria. All other options are scored relative to the base case.

Given that the base case is no fee, this option does not create any undue financial hardship on a represented individual. Therefore, any other option that does charge a fee or creates an undue financial hardship is likely to be scored at less than zero for Equity.

This option creates a \$1.840 million annual loss of revenue for VCAT to absorb,⁵⁰ jeopardising VCAT's ability to provide critical services in the Guardianship List, and places pressure on VCAT to hear applications within the 30 days legislative requirement.⁵¹ The other options will receive relative scores for Efficiency based on whether the revenue shortfall to VCAT is more or less than \$1.840 million.

A no fee option means that estates are not required to pay, and VCAT is not required to process fees and waivers. Any option that creates greater complexity for administrators and VCAT will receive a score that is less than zero for Simplicity.

The base case places the full burden of cost on the public, which does not acknowledge that administration orders have both public and private benefits. There is no benefit (such as ensuring the efficient use of government resources) in imposing a pricing signal on essential services of this nature, as there is no discretion in their use. Therefore, any option that has a better balance of the public and private costs and benefits will receive a score above zero for the final criterion.

⁵⁰ Estimated to be \$13.9 million net present value, based on the avoided cost of administering the fee (\$1 million in present cost) and assuming that fee units increase in line with inflation, and number of administration orders increases in line with estimated general population growth based on VCAT data.

⁵¹ Section 28 of the GAA



Criterion	Score	Weighting	Weighted Score
Equity: Does not create undue financial hardship on represented individuals	0	35%	0
Efficiency: Sustainability of VCAT to maintain services to the community	0	35%	0
Simplicity: Fee is simple for administrators to understand, and for VCAT to administer	0	15%	0
Beneficiary pays: recognising the private and public benefits, and sharing costs accordingly.	0	15%	0
Total weighted score	NA	100%	0

4.2.3 Option 2: current arrangement - income threshold to pay the fee set at poverty line

Option 2 is a continuation of the current fee arrangements: 9 fee units, with an updated threshold to reflect the latest poverty line.

Revenue under this option is estimated at around \$1.840 million per year, similar to current revenue, with some growth in revenue anticipated over the 10 years due to population growth.

Annual Fees

The most recent poverty line figure (at time of writing) for a single person not in the workforce is \$929.76 a fortnight.⁵²

This option maintains the fee at the current 9 fee units for those above this threshold.

Fortnightly income	Annual fee payable
Less than \$930	\$0
\$930 or above	9 fee units

Assessment of Option 2

This option ensures VCAT continues to receive sufficient revenue to maintain service levels in the Guardianship List, while also ensuring that the most vulnerable members of the community (in terms of income hardship) can access the service.

With the slight increase in the threshold to be consistent with the latest poverty line, there would be a marginal decrease in the number of represented individuals paying the fee and, consequently, a marginal decrease in fee revenue to VCAT compared to maintaining the current threshold at \$844. The number of waiver applications and approvals is also estimated to decrease slightly.

⁵² Melbourne Institute, *Poverty Lines: Australia – December 2020 Quarter*. Accessible via: https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0009/3792456/Poverty-Lines-Australia-December-2020.pdf

		Option 2	Base case - no fee
	\$m	\$m	\$m \$m
Administration orders	3.498		3.376
Comprising:			
Fee admin costs		0.122	-
Other operating costs		3.376	3.376
Guardianship orders	2.959		2.959
TOTAL LIST COSTS		6.498	6.335
Fee revenue		1.840	-
Cost recovery			
% of Administration order costs		52% ⁵³	0%
% of total List costs		28% ⁵⁴	0%

Analysis against assessment criteria

This option maintains the current fee units and income threshold (the poverty line). This means that represented individuals whose annual income is below the poverty line continue to not be required to pay the fee. However, setting the threshold at the poverty line does not allow for the additional cost burden of living with a disability. Waivers would continue to be available, but the onus is on the estate to apply and make a successful case for the waiver to be granted. Given this, Option 2 is scored at -4 for equity.

This option maintains the current revenue for the Guardianship List - an estimated \$1.840 million annually⁵⁵ - enabling the continued provision of high quality, timely and cost-effective services. Therefore, Option 2 is scored 8 for efficiency.

This option maintains the current fee structure, which is familiar to existing administrators and therefore, easy to understand. With the threshold set at the poverty line, around 73 per cent of represented individuals would be required to pay the fee. Waiver applications are estimated to remain close to the current levels,⁵⁶ creating some complexity for VCAT to administer. Given this, Option 2 is scored at -5 for simplicity.

This option sees an almost even split of private and public contribution to the cost of administration orders (as the fee revenue – the private contribution – would cover 49 per cent of the total cost of VCAT delivering services for administration orders). This reflects that there are public and private benefits to administration orders. Therefore, Option 2 scores 10 for balancing private and public benefits.

⁵³ Calculated by dividing total revenue of \$1.840 million by total costs of administration orders of \$3.498 million.

⁵⁴ Calculated by dividing total fee revenue of \$1.840 million by total costs of the VCAT Guardianship List of \$6.498 million.

⁵⁵ Estimated to be \$14.7 million over a 10-year period in net present value, assuming that fee units increase in line with inflation, and number of administration orders increases in line with estimated general population growth based on VCAT data.

⁵⁶ Approximately 7.5 per cent of eligible represented individuals apply for a fee waiver, based on VCAT data.



Criterion	Score	Weighting	Weighted Score
Equity: Does not create undue financial hardship on represented individuals	-4	35%	-1.4
Efficiency: Sustainability of VCAT to maintain services to the community	8	35%	2.8
Simplicity: Fee is simple for administrators to understand, and for VCAT to administer	-5	15%	-0.75
Beneficiary pays: recognising the private and public benefits, and sharing costs accordingly.	10	15%	1.5
Total weighted score	NA	100%	2.15

4.2.4 Option 3: income threshold to pay the fee set higher than the poverty line to recognise the additional cost burden of disability

Option 3 proposes the current 9 fee units (\$135.30 in 2021-22), with an increase to the income threshold of 30 per cent above the poverty line to allow for the additional cost burden associated with living with a disability. Waiver arrangements would continue to apply.

Annual Fees

Option 3 sets the threshold at the current poverty line, plus a 'loading' for the additional cost burden of disability of 30 per cent above the poverty line.

This option maintains the fee at the current 9 fee units (\$135.30 in 2021-22) for those above this threshold.

Fortnightly income	Annual fee payable
Less than \$1209 [<i>poverty line (\$930) + 30%</i>]	\$0
\$1209 [<i>poverty line (\$930) + 30%</i>] or above	9 fee units

Assessment of Option 3

Under this option, the proportion of represented individuals required to pay the fee is estimated to be 28 per cent compared to 73 per cent currently. Therefore, with the same fee applied to a smaller pool of eligible fee payers, revenue is estimated to drop substantially to an estimated \$0.658 million in 2020-21⁵⁷. This can be compared to the base case (no fee) of zero revenue and an estimated \$1.840 million in revenue under the current fee structure.

⁵⁷ Estimated to be \$5.7 million over a 10-year period in net present value, if fee units increase in line with inflation, and number of administration orders increases in line with estimated general population growth based on VCAT data. Waiver applications are estimated to reduce by 93 per cent compared with current waivers.

	Option 3		Base case - no fee	
	\$m	\$m	\$m	\$m
Administration orders	3.43		3.376	
Comprising:				
Fee admin costs		0.054		-
Other operating costs		3.376		3.376
Guardianship orders	2.959		2.959	
TOTAL LIST COSTS		6.389		6.335
Fee revenue		0.658		-
Cost recovery				
% of Administration order costs		19% ⁵⁸		0%
% of total List costs		10% ⁵⁹		0%

Analysis against assessment criteria

The strength of this option is in the treatment of equity considerations.

Option 3 is considered to have minimal negative equity impacts compared to the base case as the higher threshold allows for the additional cost burden of disability in most circumstances. Based on analysis of the 2017-18 income data for those under administration order, only 2.5 per cent of waivers granted were for estates where the income was more than 30 per cent above the poverty line. This suggests that most estates would still have capacity to pay the fee if the threshold increased for when the fee is payable. Given this, Option 3 is scored at -2 for equity.

Under Option 3, the total revenue to VCAT is estimated at \$0.658 million per year (in 2020-21 terms), with some growth in revenue anticipated over 10 years due to population growth. This equates to a fall in fee revenue of around \$1 million annually, which could lead to service reductions in the Guardianship List. Therefore, Option 3 is scored 2 for efficiency.

Under Option 3, fewer estates under administration will be required to pay the fee (approximately 28 per cent). The fee is simple to understand as it is similar in nature to the current fee arrangement (a single threshold for payment is set). Waiver applications are also estimated to be low (0.5 per cent) under this option, which will free up VCAT resources for other activities. Given this, Option 3 is scored at -5 for simplicity.

This Option places a greater cost burden on the public, which promotes the rights of individuals with disability, but does not acknowledge that administration orders have both public and private benefits.

Criterion	Score	Weighting	Weighted Score
Equity: Does not create undue financial hardship on represented individuals	-2	35%	-0.7
Efficiency: Sustainability of VCAT to maintain services to the community	3	35%	1.05
Simplicity: Fee is simple for administrators to understand, and for VCAT to administer	-3	15%	-0.45

⁵⁸ Calculated by dividing total fee revenue of \$0.658 million by total costs of administration orders of \$3.43 million.

⁵⁹ Calculated by dividing total fee revenue of \$0.658 million by total costs of the VCAT Guardianship List of \$6.389 million



Beneficiary pays: recognising the private and public benefits, and sharing costs accordingly.	5	15%	1.75
Total weighted score	NA	100%	0.65

4.2.5 Option 4: Full recovery of administration order costs

Option 4 sets the fee to achieve full cost recovery of administration order costs to VCAT in managing the Guardianship List. Like Option 2, this option sets a threshold for paying the fee at the poverty line and waiver arrangements would continue to apply. The fee unit would be increased to 18 fee units (\$270.55 in 2021-22) to achieve full cost recovery.

The GAA allows for VCAT to collect revenue from administration fees up to the value of the cost of the Guardianship List. However, Option 4 provides for the recovery of the cost of administration orders only. Full cost recovery of the value of all services of the Guardianship List was considered non-viable – see section 4.1.1.

As previously noted, full cost recovery could also be achieved by charging all represented estates with no income threshold. However, this would impose undue hardship on represented individuals with personal incomes below the poverty line. Many would simply not have capacity to pay the fee, increasing the level of non-payment and the cost to VCAT associated with enforcement. It could also trigger unnecessary reassessments of orders.

Therefore, the full cost recovery option pursued in this RIS is based on maintaining the poverty line threshold, with the fee being payable where the income of the represented person is above the threshold. This requires the fee level for those liable to pay to be increased substantially.

Annual Fees

It is estimated that full cost recovery would require more than doubling the annual fee from the current 9 fee units (\$135.30 in 2021-22) to 18 fee units, which is equivalent to \$270.55 (in 2021-22).

Under the full cost recovery option, those with fortnightly income less than the poverty line (the threshold) would not be required to pay the fee.

Fortnightly income	Annual fee payable
Less than \$930	\$0
\$930 or above	18 fee units

Assessment of Option 4

VCAT would still have discretion to waive all or part of the fee payable in cases of financial hardship. It is difficult to estimate the impact this Option would have on the number of waiver applications made and approved. However, with the fee doubling, it is assumed that waivers could double. This would increase the cost of processing waiver applications as well as reduce the number of individuals required to pay the fee.

Therefore, increasing the fee to meet full cost recovery is likely to increase the number of fee waiver applications and assessment costs, as well as rates of non-compliance in payment and enforcement costs. Consequently, achieving full cost recovery may require further fee increases. There is a potential feedback loop as the fee increases, leading to further increased costs and hardship waivers, requiring further fee increases. This could make full cost recovery unsustainable in the long term.



Given the fee under this option would be double the current levels, it could also act as a disincentive to seeking an administration order.

		Option 4	Base case - no fee
	\$m	\$m	\$m
Administration orders	3.566		3.376
Comprising:			
Fee admin costs		0.190	-
Other operating costs		3.376	3.376
Guardianship orders	2.959		2.959
TOTAL LIST COSTS		6.525	6.335
Fee revenue		3.617	-
Cost recovery			
% of Administration order costs		100%	0%
% of total List costs		55.4% ⁶⁰	0%

Analysis against assessment criteria

Option 4 sets the income threshold at the poverty line, which does not consider the additional cost burden of disability. Additionally, full cost recovery requires that the fee units be doubled, increasing the potential for financial hardship on represented individuals required to pay. This will result in some cross-subsidisation from those paying the fee to meet the shortfall from those below the threshold, meaning some individuals will be paying more than the cost of using VCAT's services. Given this, Option 4 is scored -6 for equity.

This option will likely see VCAT's revenue increase to \$3.167 million per year⁶¹ (in 2020-21), almost meeting the full cost of administration orders. This amount exceeds the current funding model, freeing up VCAT's resources to deliver other Guardianship List functions. Option 4 is scored 10 for efficiency.

Given the doubling of the fee units, this option is likely to see a commensurate rise in the number of fee waiver applications made by administrators (increasing the complexity in collecting the fee) and processed by VCAT. Where this leads to more fee waivers being granted, fee revenue would fall, meaning full cost recovery would not be entirely achieved without even further fee increases. Therefore, Option 4 is scored at -8 for simplicity.

Option 4 has a 100 per cent private contribution to the cost of administration orders, as the revenue from the fees fully funds the cost of VCAT delivering services relating to administration orders. The base case does not acknowledge the private benefits of administration orders. Conversely this option does not acknowledge the public benefits, and is similarly not considered to be a reasonable balance of public and private contributions. Therefore, Option 4 scores 0 for balancing private and public interests.

⁶⁰ Calculated by dividing total fee revenue of \$3.617 million by total costs of the VCAT Guardianship List of \$6.525 million

⁶¹ Estimated to be \$29.6 million over 10 years, if fee units increase in line with inflation, and number of administration orders increases in line with estimated general population growth based on VCAT data. This revenue would meet the estimated cost of administration orders (including fee administration collection and waiver processing costs)



Criterion	Score	Weighting	Weighted Score
Equity: Does not create undue financial hardship on represented individuals	-6	35%	-2.1
Efficiency: Sustainability of VCAT to maintain services to the community	10	35%	3.5
Simplicity: Fee is simple for administrators to understand, and for VCAT to administer	-8	15%	-1.2
Beneficiary pays: recognising the private and public benefits, and sharing costs accordingly.	0	15%	0.2
Total weighted score	NA	100%	0.2

4.2.6 Determining the preferred option

The table below summaries the weighted scores of the four options.

Criterion	Weighting	Option 1 No fees (Base case)	Option 2 Threshold set at poverty line	Option 3 Threshold set at 30 per cent above poverty line	Option 4 Full cost recovery
Equity: Does not create undue financial hardship on represented individuals	35%	0	-1.4	-0.7	-2.1
Efficiency: Sustainability of VCAT to maintain services to the community	35%	0	2.8	1.05	3.5
Simplicity: Fee is simple for administrators to understand, and for VCAT to administer	15%	0	-0.75	-0.45	-1.2
Beneficiary pays: recognising the private and public benefits, and sharing costs accordingly.	15%	0	1.5	0.75	0
Total weighted score	100%	0	2.15	0.65	0.2

Option 2 is the highest scoring option, performing strongly against all criteria. It outperformed the other options against the criteria of equity (given that VCAT's current funding model is maintained) and is ranked second for simplicity and balance of public and private benefits. Its weakest comparative score is against equity, given that the poverty line threshold does not factor in the additional cost burden of living with a disability. However, its high combined total score makes it the clear preferred option. As the preferred option, this option has been made into proposed regulations at [Attachment A](#).

The Base Case, Option 1, scored the highest against the equity and simplicity criterion, outperforming all other options. However, it scored very poorly on efficiency and the balance



between private and public benefits. The combined total score makes the base case the least preferred option.

Option 3 received the second highest overall score, after Option 2. It was the second highest scoring option against the equity, simplicity and balance of public and private interests criteria. However, this option performed poorly against the efficiency criteria, bringing down the overall score.

Option 4 (full cost recovery) received the third score. It outperformed all other options against the efficiency criterion, but performed poorly against equity, simplicity and balancing the benefits.

5. Evaluation Plan and implementation

5.1 Implementation

The current fee arrangement is set to expire in February 2022. New regulations, (to be known as the Guardianship and Administration (Fees) Regulations 2022) reflecting the preferred fee option, will be prepared by the Department of Justice and Community Safety to commence by this time. The Department of Justice and Community Safety will write to relevant stakeholders to advise when the new regulations commence.

Once the new regulations are made, VCAT will implement the new fee structure. This will be straightforward and involve updating the fee and other relevant information on the VCAT website.⁶² Any new annual fee rate set by the Guardianship and Administration (Fees) Regulations 2022 will be charged when the annual fees are next collected. VCAT collects fees at the commencement of the new financial year for all administration orders in place in the previous financial year (e.g. collection of fees for 2021-22 will commence soon after 30 June 2022).

The Department of Justice and Community Safety and VCAT will monitor the implementation of the annual fee, with the opportunity to consider any issues during the evaluation process.

5.2 Evaluation

The Victorian Civil and Administrative Tribunal (Fees) Regulations 2016 set the fees payable for the commencement and hearing of proceedings in VCAT. The RIS for these regulations committed to a mid-term independent evaluation of VCAT fees in 2021.⁶³ The mid-term evaluation has been postponed due to disruptions arising from the COVID-19 pandemic.

This RIS proposes that the Guardianship and Administration (Fees) Regulations 2022 be reviewed as a component of a larger process which will also include the VCAT mid-term fee review, when it occurs. This additional time is intended to allow the impacts to VCAT's operations from the introduction of the GAA to be discernible from the operational impacts of the COVID-19 pandemic.

The baseline data for the evaluation will be the data used throughout this RIS. Updated information and data will be obtained from VCAT for the purposes of the evaluation. The regulations will be evaluated against the criteria outlined in the RIS for the Victorian Civil and Administrative Tribunal (Fees) Regulations 2016, such as whether the regulations support: VCAT's role in Victoria's civil justice system; access to justice; improving equity between VCAT users and efficiency at VCAT.

⁶² <https://www.vcat.vic.gov.au/>

⁶³ VCAT (Fees) Regulation 2016 – RIS. Accessible via: <https://www.vic.gov.au/regulatory-impact-statements-2016>



6. Consultation

This RIS has been released for a consultation period of 60 days, meeting the minimum consultation period of 28 days in the *Subordinate Legislation Act 1994*⁶⁴ and the related guidelines.⁶⁵

Preliminary consultations also occurred with OPA given their views on the fee.

Under the GAA, the President of VCAT must be consulted before making regulations prescribing annual fees to be paid in relation to estates that are the subject of an administration order. VCAT has been consulted during the development of the RIS. The financial data contained in the RIS has been provided by VCAT.

⁶⁴ Section 11(2) of the *Subordinate Legislation Act 1997* (Vic).

⁶⁵ Section 12C and section 26 of the *Subordinate Legislation Act 1997* (Vic). The guidelines are available here: <https://www.vic.gov.au/sites/default/files/2019-10/Victorian-Guide-to-Regulation.pdf>